Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

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THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

The abstracts, rulings, and notices which are issued weekly by the U.S. Customs Service are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Logistics Management Division, Washington, D.C. 20229, of any such errors in order that corrections may be made before the bound volumes are published.

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U.S. Customs Service

Treasury Decisions

(T.D. 79-86)

Forms Used for Declaration and Entry of Foreign Repairs and Equipment Purchases by U.S. Vessels and Aircraft

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This notice informs the transportation community that effective June 1, 1979, Customs will require Customs form 226, "Record of Vessel/Aircraft Foreign Repair or Equipment Purchase" to be used in place of Customs form 3415, "Declaration of Foreign Repairs to Vessels or Aircraft", and Customs form 7535, "Vessel/Aircraft Foreign Repair or Equipment Purchase Entry". Customs form 3415 and Customs form 7535 have been replaced by Customs form 226 in compliance with a Presidential directive to reduce the number of public use forms. These forms relate to the declaration and entry of foreign repairs to, or equipment purchases by, U.S. vessels and aircraft under section 466, Tariff Act of 1930, as amended (19 U.S.C. 1466).

EFFECTIVE DATE: The use of Customs form 226 shall be mandatory effective June 1, 1979.

FOR FURTHER INFORMATION CONTACT: Allard P. D'Heur, Cargo Processing Branch, Inspection and Control Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229; 202-566-5354.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The master of a vessel documented under the laws of the United States to engage in the foreign or coasting trade, or intended to be employed in the foreign or coasting trade, at the port of first arrival from a foreign country, is required to declare on Customs form 3415 any equipment, repair parts, or material purchased for the vessel, or any expense for repairs incurred, in a foreign country within the purview of

section 466, Tariff Act of 1930, as amended (19 U.S.C. 1466). Entry on Customs form 7535 is required to be made for such equipment or repairs. If no equipment has been purchased or repairs made, a declaration to that effect is required on Customs form 3415. Sections 4.7(d)(1), 4.14(b), Customs Regulations (19 CFR 4.7(d)(1), 4.14(b)).

Under section 6.7(d), Customs Regulations (19 CFR 6.7(d)), the provisions of section 466, Tariff Act of 1930, as amended, are made applicable to aircraft of U.S. registry engaged in trade and arriving in the United States, whether from a contiguous or noncontiguous foreign country. Sections 6.7 (d) and (e) provide for the use by the aircraft commander of Customs forms 3415 and 7535 in appropriate circumstances.

In compliance with a Presidential directive to reduce the number of public use forms, Customs has developed Customs form 226 to replace Customs forms 3415 and 7535. By information notice 78–58, dated May 26, 1978, Customs advised of the availability of the new form and provided that Customs forms 3415 and 7535 could continue to be used until supplies were exhausted.

ACTION

Effective April 1, 1979, Customs forms 3415 and 7535 no longer will be made available by Customs. However, to minimize inconvenience to the public, those forms may continue to be used through May 31, 1979. Effective June 1, 1979, the use of Customs form 226 will be mandatory.

Customs form 226 is available from district directors of Customs at a price of $1.80 per pad of 100 forms. It may be printed by private parties provided that the privately printed form conforms to the official version in size, wording, arrangement, quality, and color of paper, and color of ink. Private parties should discontinue immediately any further printing of Customs forms 3415 and 7535.

Appropriate conforming amendments to sections 4.7, 4.14, and 6.7, Customs Regulations, to provide for the use of Customs form 226 in place of Customs forms 3415 and 7535, will be made as soon as possible.

DRAFTING INFORMATION

The principal author of this document is Laurie S. Amster, Regulations and Legal Publications Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: March 14, 1979.

JACK T. LACY,
Assistant Commissioner, Administration.

[Published in the Federal Register, Mar. 21, 1979 (44 F.R. 17250)]

T.D. 79-87

TITLE 19—CUSTOMS DUTIES

CHAPTER 1—U.S. CUSTOMS SERVICE, DEPARTMENT OF THE TREASURY

PART 153—ANTIDUMPING

Viscose Rayon Staple Fiber From Finland

AGENCY: U.S. Treasury Department.

ACTION: Finding of dumping.

SUMMARY: This notice is to inform the public that separate investigations conducted under the Antidumping Act, 1921, as amended, by the U.S. Treasury Department and the U.S. International Trade Commission, respectively, have resulted in determinations that viscose rayon staple fiber from Finland is being sold at less than fair value and that these sales are injuring an industry in the United States. On this basis, a finding of dumping is being issued and, generally, all unappraised entries of this merchandise will be liable for the possible assessment of special dumping duties.

EFFECTIVE DATE: March 21, 1979.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229; 202-566-5492.

SUPPLEMENTARY INFORMATION: Section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)) (referred to in this notice as "the act"), gives the Secretary of the Treasury responsibility for the determination of sales at less than fair value. Pursuant to this authority, the Secretary has determined that viscose rayon staple fiber from Finland is being sold at less than fair value within the meaning of section 201(a) of the act (19 U.S.C. 160(a)). (Published in the Federal Register of Nov. 16, 1978 (43 F.R. 53531).) This determination was modified by publication of a notice of "Modification of Determination of Sales at Less Than Fair Value" in the Federal Register of January 10, 1979 (44 F.R. 2219).

Section 201(a) of the act (19 U.S.C. 160(a)) gives the U.S. International Trade Commission responsibility for determining whether, by reason of such sales at less than fair value, a domestic industry is being or is likely to be injured. The Commission has determined, and on February 14, 1979, it notified the Secretary of the Treasury that an industry in the United States is being injured by reason of the importation of viscose rayon staple fiber from Finland that is being sold at less than fair value within the meaning of the act. Notice of

this determination was published in the Federal Register of February 20, 1979 (44 F.R. 10437).

On behalf of the Secretary of the Treasury, I hereby make public these determinations, which constitute a finding of dumping with respect to viscose rayon staple fiber from Finland.

For purposes of this notice, the term "viscose rayon staple fiber" means viscose rayon staple fiber, except solution dyed, in noncontinuous form, not carded, not combed, and not otherwise processed, wholly of filaments (except laminated filaments and plexiform filaments). This term includes both commodity fiber and specialty fiber.

At various stages in this investigation both before the Treasury Department and the International Trade Commission, one or another party has sought to limit its scope to "commodity" grade fiber. However, as adequate reasons for such a limitation were not timely presented to the Treasury during its phase of the investigation and a majority of the Commission did not limit its determination to the "commodity" grade, there is now no basis for describing the merchandise subject to this finding in terms other than those applied since the proceedings were initiated.

Accordingly, section 153.46 of the Customs Regulations (19 CFR 153.46) is being amended by adding the following to the list of findings of dumping currently in effect.

Merchandise	Country	Treasury decision
Viscose rayon staple fiber	Finland	T.D. 79–87

(Sec. 201, 407, 42 Stat. 11, as amended, 18 (19 U.S.C. 160, 173).)

March 12, 1979.

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

[Published in the Federal Register, Mar. 21, 1979 (44 F.R. 17156)]

T.D. 79–88

TITLE 19—CUSTOMS DUTIES

CHAPTER 1—U.S. CUSTOMS SERVICE, DEPARTMENT OF THE TREASURY

PART 153—ANTIDUMPING

Viscose Rayon Staple Fiber from France

AGENCY: U.S. Treasury Department.

ACTION: Finding of dumping.

SUMMARY: This notice is to inform the public that separate

investigations conducted under the Antidumping Act, 1921, as amended, by the U.S. Treasury Department and the U.S. International Trade Commission, respectively, have resulted in determinations that viscose rayon staple fiber from France is being sold at less than fair value and that these sales are injuring an industry in the United States. On this basis, a finding of dumping is being issued and, generally, all unappraised entries of this merchandise will be liable for the possible assessment of special dumping duties.

EFFECTIVE DATE: March 21, 1979.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229; 202–566–5492.

SUPPLEMENTARY INFORMATION: Section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)) (referred to in this notice as "the act"), gives the Secretary of the Treasury responsibility for the determination of sales at less than fair value. Pursuant to this authority, the Secretary has determined that viscose rayon staple fiber from France is being sold at less than fair value within the meaning of section 201(a) of the act (19 U.S.C. 160(a)). (Published in the Federal Register of Nov. 16, 1978 (43 F.R. 53530).) This determination was modified by publication of a notice of "Modification of Determination of Sales at Less Than Fair Value" in the Federal Register of January 10, 1979 (44 F.R. 2218).

Section 201(a) of the act (19 U.S.C. 160(a)) gives the U.S. International Trade Commission responsibility for determining whether, by reason of such sales at less than fair value, a domestic industry is being or is likely to be injured. The Commission has determined, and on February 14, 1979, it notified the Secretary of the Treasury that an industry in the United States is being injured by reason of the importation of viscose rayon staple fiber from France that is being sold at less than fair value within the meaning of the act. Notice of this determination was published in the Federal Register of February 20, 1979 (44 F.R. 10437).

On behalf of the Secretary of the Treasury, I hereby make public these determinations, which constitute a finding of dumping with respect to viscose rayon staple fiber from France.

For purposes of this notice, the term "viscose rayon staple fiber" means viscose rayon staple fiber, except solution dyed, in noncontinuous form, not carded, not combed, and not otherwise processed, wholly of filaments (except laminated filaments and plexiform filaments). This term includes both commodity fiber and specialty fiber.

At various stages in this investigation both before the Treasury Department and the International Trade Commission, one or another

party has sought to limit its scope to "commodity" grade fiber. However, as adequate reasons for such a limitation were not timely presented to the Treasury during its phase of the investigation and a majority of the Commission did not limit its determination to the "commodity" grade, there is now no basis for describing the merchandise subject to this finding in terms other than those applied since the proceedings were initiated.

Accordingly, section 153.46 of the Customs Regulations (19 CFR 153.46) is being amended by adding the following to the list of findings of dumping currently in effect.

Merchandise	Country	Treasury decision
Viscose rayon staple fiber	France	T.D. 79-88

(Sec. 201, 407, 42 Stat. 11, as amended, 18 (19 U.S.C. 160, 173).)

March 12, 1979.

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

[Published in the Federal Register, Mar. 21, 1979 (44 F.R. 17157)]

(T.D. 79-89)

Notice of Modification or Revocation of Dumping Finding Antidumping—Large Power Transformers From Italy

The Secretary of the Treasury makes public a modification of the finding of dumping with respect to large power transformers from Italy. Section 153.46, Customs Regulations, amended

TITLE 19—CUSTOMS DUTIES

CHAPTER I—U.S. CUSTOMS SERVICE

PART 153—ANTIDUMPING

AGENCY: U.S. Treasury Department.

ACTION: Modification of dumping finding.

SUMMARY: This notice is to inform the public that certain large power transformers from Italy manufactured by Asgen Ansaldo San Giorgio Compagnia Generale S.p.A. and Societa Nazionale delle Officine di Savigliano are no longer being sold at less than fair value under the Antidumping Act, 1921. In addition, Savigliano has given assurances that any future sales will not be at less than fair value, and

Asgen has given assurances that it has ceased manufacturing large power transformers. As a result of this action, certain large power transformers from Italy entered, or withdrawn from warehouse, for consumption on or after May 24, 1976, will not be liable for dumping duties.

EFFECTIVE DATE: March 22, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. David P. Mueller, Operations Officer, U.S. Customs Service, Office of Operations, Duty Assessment Division, Technical Branch, 1301 Constitution Avenue NW., Washington, D.C. 20229; telephone 202–566–5492.

SUPPLEMENTARY INFORMATION: On June 14, 1972, a finding of dumping with respect to large power transformers from Italy was published as T.D. 72–161 in the Federal Register (37 F.R. 11772). A "Notice of Tentative Determination to Modify or Revoke Dumping Finding" with respect to this merchandise from Italy produced and sold by Asgen Ansaldo San Giorgio Compagnia Generale S.p.A. of Genova, Italy (Asgen) and Societa Nazionale delle Officine di Savigliano of Torino, Italy (Savigliano) was published in the Federal Register of May 24, 1976 (41 F.R. 21208).

Reasons for the tenative determination were published in the above-mentioned notice and interested persons were afforded an opportunity to provide written submissions or request the opportunity to present oral views in connection therewith.

There were no objections to the modification of the finding with respect to Asgen, which no longer manufactures large power transformers. Written comments were received in opposition to a modification of the finding with regard to Savigliano. The basis of the objection was that a modification should not be granted merely because of an absence of actual sales to the United States for more than 2 years, together with assurances by Savigliano that they will not sell at less than fair value in the future. The Department, however, has interpreted the requirement of an "absence or termination of sales at less than fair value" in section 153.44(a) of the Customs Regulations (19 CFR 153.44(a)) to encompass both the absence of actual sales and the absence of sales at less than fair value. Moreover, further analysis indicated that there were, in fact, sales to the United States by Savigliano between 1971 and 1973, for which there were no dumping margins.

Having considered the submissions presented, I hereby determine that, for the reasons stated above and in the "Notice of Tentative Determination to Modify or Revoke Dumping Finding," large power transformers from Italy, produced and sold by Asgen and Savigliano, are not being, nor likely to be, sold at less than fair value.

289–734—79——2

Accordingly, section 153.46 of the Customs Regulations (19 CFR 153.46) is amended to exclude large power transformers from Italy, produced and sold by Asgen and Savigliano, from T.D. 72–161.

Merchandise	Country	T.D.	Modified by
Large power transformers, except those produced and sold by Asgen Ansaldo San Giorgio Compagnia Generale S.p.A. and Societa Nazionale delle Officine di Savigliano.	Italy	72–161	T.D. 79–89

This notice is published pursuant to section 153.44(d) of the Customs Regulations (19 CFR 153.44(d)).

(Sec. 201, 407, 42 Stat. 11, as amended, 18; 19 U.S.C. 160, 173.)

March 15, 1979.

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

[Published in the Federal Register, Mar. 22, 1979 (44 F.R. 17482)]

(T.D. 79–90)

TITLE 19—CUSTOMS DUTIES

CHAPTER I—U.S. CUSTOMS SERVICE

DEPARTMENT OF THE TREASURY

PART 159—LIQUIDATION OF DUTIES

Final Countervailing Duty Determination Ampicillin Trihydrate and Its Salts From Spain

AGENCY: U.S. Customs Service, Treasury Department.

ACTION: Final countervailing duty determination.

SUMMARY: This notice is to advise the public that a countervailing duty investigation has resulted in a final determination that the Government of Spain grants to producers and exporters of ampicillin trihydrate and its salts benefits which constitute bounties or grants within the meaning of the countervailing duty law. Deposited countervailing duties in the amount of these benefits will be required at the

time of entry in addition to duties normally collected on dutiable shipments of the merchandise.

EFFECTIVE DATE: March 22, 1979.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229; 202–566–5492.

SUPPLEMENTARY INFORMATION: On November 28, 1978, a notice of "Preliminary Countervailing Duty Determination" was published in the Federal Register (43 F.R. 55512). The notice stated that it had been preliminarily determined that benefits bestowed by the Government of Spain upon the manufacture, production, or exportation of ampicillin trihydrate constitute the payment of a bounty or grant within the meaning of section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303) (hereinafter referred to as the "act"). The instant determination includes ampicillin trihydrate and its salts, as provided for in item No. 407.8511, Tariff Schedules of the United States, Annotated. This description is used in order to cover all those products which receive the benefits under consideration.

The benefits are received in the form of an overrebate upon export of the Spanish indirect tax, the "Desgravacion Fiscal." The overrebate consists of three elements: (1) The rebate of taxes on services and noncomponent inputs which are not physically incorporated in the final product; (2) a credit for a tax assessed on transactions between manufacturers and wholesalers which, in fact, is not assessed on export sales; and (3) a number of "parafiscal" taxes included in the computation of the rebate, which are charges assessed for services provided and which are not levied on an ad valorem basis.

The submission of comments by interested parties has been invited, but no additional data have been received. A review of current import statistics reveal that ampicillin trihydrate and its salts are imported in substantial volume. After consideration of the available information, it is hereby determined that exports of ampicillin trihydrate and its salts from Spain benefit from bounties or grants within the meaning of section 303, Tariff Act of 1930, as amended. The amount of the overrebate has been determined in accordance with the "Notice of Revised Method for Calculation of Bounty or Grant with Regard to Certain Indirect Taxes," published in the Federal Register on January 17, 1979 (44 F.R. 3478).

Accordingly, notice is hereby given that ampicillin trihydrate and its salts which are imported directly or indirectly from Spain, if entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register, will be subject to the payment of countervailing duties equal to the net amount

of any bounty or grant determined or estimated to have been paid or bestowed.

In accordance with section 303 of the act and until further notice, the net amount of such bounties or grants has been ascertained and determined to be 2.21 percent of the f.o.b. value of the merchandise.

Effective on or after the publication date of this notice, and until further notice, upon the entry, or withdrawal from warehouse, for consumption of such ampicillin trihydrate and its salts imported directly or indirectly from Spain, which benefit from these bounties or grants, there shall be collected, in addition to any other duties estimated or determined to be due, countervailing duties in the amount ascertained in accordance with the above declaration. To the extent that it can be established to the satisfaction of the Commissioner of Customs that imports of ampicillin trihydrate and its salts from Spain are benefiting from a bounty or grant smaller than the amount which otherwise would be applicable under the above declaration, the smaller amount so established shall be assessed and collected.

Any merchandise subject to the terms of this order shall be deemed to have benefited from a bounty or grant if such bounty or grant has been or will be credited or bestowed, directly or indirectly, upon the manufacture, production, or exportation of ampicillin trihydrate and its salts from Spain.

The table in section 159.47(f) of the Customs Regulations (19 CFR 159.47(f)) is amended by inserting after the last entry for "Spain," the words "ampicillin trihydrate and its salts" in the column headed "Commodity," the number of this Treasury decision in the column headed "Treasury decision" and the words "Bounty declared-rate" in the column headed "Action."

(R.S. 251, as amended, secs, 303, as amended, 624, 46 Stat. 687, as amended, 759 (19 U.S.C. 66, 1303, 1624).)

This final determination is published pursuant to section 303(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1303(a)).

Pursuant to reorganization plan No. 26 of 1950 and Treasury Department order 190 (revision 15) March 16, 1978, the provisions of Treasury Department order No. 165, revised, November 2, 1954, and section 154.47 of the Customs Regulations (19 CFR 159.47), insofar as they pertain to the issuance of a final countervailing duty determination by the Commissioner of Customs, are hereby waived.

March 16, 1979.

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

[Published in the Federal Register, Mar. 22, 1979 (44 F.R. 17484)]

(T.D. 79–91)

Countervailing Duties—Nonrubber Footwear, Handbags, and Leather Wearing Apparel From Uruguay

Notice of revocation of countervailing duties imposed under section 303, Tariff Act of 1930, as amended, by reason of the payment or bestowal of a bounty or grant upon the manufacture, production, or exportation of nonrubber footwear, handbags, and leather wearing apparel from Uruguay

TITLE 19—CUSTOMS DUTIES

CHAPTER I—U.S. CUSTOMS SERVICE, DEPARTMENT OF THE TREASURY

PART 159—LIQUIDATION OF DUTIES

AGENCY: U.S. Customs Service, Treasury Department.

ACTION: Revocation of final countervailing duty determination.

SUMMARY: This notice is to advise the public that the countervailing duty determination on nonrubber footwear, handbags, and leather wearing apparel from Uruguay is being revoked. This action is being taken since it has been determined that the Government of Uruguay no longer grants benefits which are considered to be bounties or grants within the meaning of the countervailing duty law upon the manufacture, production, or exportation of these products.

EFFECTIVE DATE: February 16, 1979.

FOR FURTHER INFORMATION CONTACT: Michael Ready, Technical Branch, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20220; 202–566–5492.

SUPPLEMENTARY INFORMATION: On November 13, 1978, a notice of "Revocation of Waivers of Countervailing Duties" was published in the Federal Register (43 F.R. 52485). This decision revoked T.D. 78–34 and T.D. 78–155, in which the Treasury Department waived the imposition of countervailing duties on imports of nonrubber footwear, handbags, and leather wearing apparel from Uruguay.

The revocation of those decisions was based upon: (1) The determination by the Treasury that the tanner's subsidy, originally not considered a bounty or grant, should be considered countervailable when paid to manufacturers/exporters of leather products; and (2) information received subsequent to the issuance of the waiver that leather goods exported from Uruguay were being granted suspension or forgiveness from, or rebates of, payment of a social security tax.

Such forgiveness or rebate is considered countervailable by the Treasury Department. Therefore, it was determined that nonrubber footwear, handbags, and leather wearing apparel (provided for, respectively, in items 700.05 through 700.85 inclusive of the Tariff Schedules of the United States Annotated (TSUSA), excepting items 700.28, 700.51 to 700.54, and 700.60; item 706.0820 of the TSUSA; and item 791.76 of the TSUSA), imported directly or indirectly from Uruguay, if entered, or withdrawn from warehouse, for consumption, on or after November 13, 1978, would be subject to the payment of countervailing duties equal to the net amount of any bounty or grant estimated to have been bestowed.

At the time the subject waivers were revoked, inadequate information was available to the Treasury to permit the proper quantification of the "net" amounts of bounties or grants bestowed as a result of the social security tax forgiveness and the tanners subsidy. Therefore, the liquidation of all entries, or withdrawals from warehouse, for consumption, of nonrubber footwear, handbags, and leather wearing apparel subject to the order were suspended. A deposit of the estimated countervailing duties in the amount of 16 percent ad valorem for nonrubber footwear, 14.4 percent ad valorem for handbags, and 13.3 percent ad valorem for leather wearing apparel, respectively, was required at the time of entry, or withdrawal from warehouse, for consumption.

Information has now been made available to the Treasury Department which has permitted a more accurate calculation of the net amount of the bounty or grant applicable to each of the product areas. With regard to the social security tax program it has been determined that deferrals of certain social security taxes were granted to manufacturers of leather products and several other product sectors covered by these orders for 1978. It has also been determined, however, that the deferral was in effect for 1 year only and applied to only 1978 social security taxes. The deferral program was eliminated at the end of 1978 and repayment of the taxes deferred in 1978 was required. Therefore, for all nonrubber footwear, handbags, and leather wearing apparel exported from Uruguay to the United States on or after January 10, 1979, the social security tax program has not been considered in the calculation of the "net" amount of the bounty or grant bestowed. Also on January 10, 1979, the Government of Uruguay eliminated the payment of the tanner's subsidy on all of the leather products covered by this investigation when exported to the United States. The Treasury Department has thus adjusted the net amount of the bounty or grant applicable to nonrubber footwear, handbags, and leather wearing apparel exported to the United States from Uruguay on or after January 10, 1979.

Upon the elimination of the tanners subsidy on exports to the United States, however, the tanners subsidy for shipments to third countries was doubled. It is the position of the Treasury Department that while the doubling of the tanners subsidy on exports to third countries clearly creates a distortion in international trade, no remedy is available to this action within the limits of the countervailing duty law. It is possible that a more appropriate remedy to this sort of distortion is available through other sections of the U.S. tariff and trade laws.

Finally, it has been determined that the Government of Uruguay has imposed an export tax on all nonrubber footwear, handbags, and leather wearing apparel exported to the United States on or after February 16, 1979, in an amount equal to the net amount of the bounty or grant remaining after the elimination of the tanners subsidy and social security tax deferral. Accordingly, it has been determined that a bounty or grant within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303) is no longer being paid or bestowed upon the manufacture, production, or exportation of nonrubber footwear, handbags, and leather wearing apparel from Uruguay exported to the United States on or after February 16, 1979.

Accordingly, T.D. 78–32, T.D. 78–33, and T.D. 78–154 are hereby revoked with respect to all entries of nonrubber footwear, handbags, and leather wearing apparel from Uruguay exported on or after February 16, 1979. Customs officers will be instructed to proceed with liquidation of all such entries without regard to countervailing duties. Customs officers will be instructed to proceed with liquidation of all entries of nonrubber footwear, handbags, and leather wearing apparel from Uruguay entered, or withdrawn from warehouse, for consumption on or after November 13, 1978, the effective date of the "Revocation of Waivers of Countervailing Duties," and before February 16, 1979, in accordance with the instructions that follow.

The revocation of these determinations will be contingent upon the submission to the Treasury Department of certifications on a quarterly basis by the Government of Uruguay that the export tax is being assessed in the appropriate amounts.

Based upon analysis of the information provided, a net bounty or grant was determined to exist in the following amounts for goods entered, or withdrawn from warehouse for consumption on or after November 13, 1978, and which were exported from Uruguay before January 10, 1979: (1) Boots with leather uppers and leather soles—13.676 percent; (2) boots with leather uppers and nonleather soles—10.676 percent; (3) shoes with rubber soles and leather uppers, braided, made of strips, hemstitched or perforated; shoes with artificial plastic soles and cow leather closed uppers, excluding boots—9.639 percent;

(4) shoes, other—10.699 percent; (5) handbags—8.5 percent; (6) leather wearing apparel—11.845 percent. Included in those amounts is a figure for the tanners subsidy in effect during that period. With regard to items exported to the United States during this period which did not benefit from the payment of the tanners subsidy due to their manufacture out of imported tanned leather, the countervailing duty collected will be reduced by the amount of the applicable tanners subsidy on the presentation of appropriate documentation to Customs authorities that the imported leather product is made of non-Uruguayan leather.

With respect to nonrubber footwear, handbags, and leather wearing apparel exported from Uruguay to the United States on or after January 10, 1979, and before February 16, 1979, the following net amounts of bounties or grants were determined to exist and countervailing duties in those amounts will be applied: (1) All leather boots—6.43 percent; (2) shoes with rubber soles and leather uppers, braided, made of strips, hemstitched or perforated; shoes with artificial plastic soles and cow leather closed uppers, excluding boots—5.37 percent; (3) shoes, other—6.43 percent; (4) handbags—4.329 percent; (5) leather wearing apparel—3.687 percent.

For nonrubber footwear, handbags, and leather wearing apparel exported on or after February 16, 1979, countervailing duties will not be imposed. The table in section 159.47(f) of the Customs Regulations (19 CFR 159.47(f)) is amended by deleting under the commodity headings for Uruguay the words "nonrubber footwear," "leather handbags," and "leather wearing apparel," respectively; from the column headed "Treasury decision" the numbers "78–32," "78–33," and "78–154," respectively; and the words "Bounty-declared-rate" in the column headed "Action," respectively.

Pursuant to reorganization plan No. 26 of 1950 and Treasury Department order 190 (revision 15), March 16, 1978, the provisions of Treasury Department order 165, revised, November 2, 1954, and section 159.47 of the Customs Regulations (19 CFR 159.47), insofar as they pertain to the issuance of a revocation order by the Commissioner of Customs, are hereby waived.

(R.S. 251, as amended, secs. 303, 624, 46 Stat. 687, 759, 88 Stat. 2051, 2052; 19 U.S.C. 66, 1303, as amended, 1624.)

March 15, 1979.

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

[Published in the Federal Register, Mar. 22, 1979 (44 F.R. 17485)]

(T.D. 79-92)

Countervailing Duties—Certain Textiles and Textile Products From Uruguay

Notice of revocation of countervailing duty order imposed under section 303, Tariff Act of 1930 as amended, by reason of the payment or bestowal of a bounty or grant upon the manufacture, production, or exportation of certain textiles and textile products from Uruguay

TITLE 19—CUSTOMS DUTIES

CHAPTER I—U.S. CUSTOMS SERVICE, DEPARTMENT OF THE TREASURY

PART 159—LIQUIDATION OF DUTIES

AGENCY: U.S. Customs Service, Treasury Department.

ACTION: Revocation of final countervailing duty order.

SUMMARY: This notice is to advise the public that the Treasury Department is revoking its order imposing countervailing duties on all entries, or withdrawals from warehouse, for consumption, of certain textiles and textile products from Uruguay (T.D. 78-444). This action is being taken as it has been determined that firms no longer receive benefits which are considered to be bounties or grants within the meaning of the U.S. countervailing duty law upon the manufacture, production, or exportation of certain textiles or textile products.

EFFECTIVE DATE: February 16, 1979.

FOR FURTHER INFORMATION CONTACT: Michael Ready, Technical Branch, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C.; 202-566-5492.

SUPPLEMENTARY INFORMATION: On November 16, 1978, T.D. 78-444 was published in the Federal Register (43 F.R. 53526). In that decision the Treasury Department determined that exports of men's and boys' apparel and textile mill products of cotton, wool, and manmade fibers from Uruguay benefit from bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (hereinafter referred to as "the act") (19 U.S.C. 1303). As a result, countervailing duties in the following amounts were imposed on all imports of the products under investigation on or after the date of publication of that decision in the Federal Register: 16.8 percent for yarns; 38.8 percent for fabrics; and 42.8 percent for apparel.

One product covered by the determination, wool yarns, entering the United States under item No. 307.60 of the Tariff Schedules of

the United States, enters the United States free of duty. In accordance with section 303(a)(2) of the act (19 U.S.C. 1303(a)(2)), countervailing duties may not be imposed upon any article or merchandise which is free of duty absent a determination by the U.S. International Trade Commission that an industry in the United States is being, or is likely to be, injured, or is prevented from being established, by reason of the importation of such article or merchandise into the United States. The International Trade Commission was notified of this determination and pending the conclusion of its investigation, the liquidation of entries of the duty-free items was suspended. On February 16, 1979, the International Trade Commission published in the Federal Register its determination that there was no injury or likelihood of injury to a domestic industry by virtue of the importation of duty-free wool yarn from Uruguay (44 F.R. 10137). Therefore, no countervailing duties were imposed on wool yarn from Uruguay entering the United States under TSUS item 307.60.

In calculating the countervailing duty at the time of the final determination, the full value of tax certificates granted to manufacturers upon the exportation of goods, known as "reintegros," was considered to be a bounty or grant. At that time, a number of offsets to the face value of the reintegros requested by the Government of Uruguay were rejected by the Treasury Department due to a lack of documentation sufficient to permit the accurate calculation of the offsets. Such documentation has now been supplied as well as more detailed information regarding the amount of the reintegros paid on the various products subject to the investigation. Where appropriate the Treasury has permitted offsets to the face value of the "reintegros" received for: (1) The payment of a special tax on the sale of wool; (2) the national agricultural tax; (3) the incomplete drawback of Customs duties paid on imported raw materials and component parts used in exported textile products; (4) the incomplete rebate of the Uruguayan value added tax on goods when exported; (5) a number of export taxes which are assessed on the value of the exported product; and (6) the loss in value of the reintegro due to the devaluation of the Uruguayan peso during the period between the date upon which the exchange rate used to calculate the reintegro subsidy is set and the date at which the exporter receives payment for his exports and exchanges that money into Uruguayan pesos.

Having adjusted for each of these elements and obtained more detailed information with regard to the other programs considered to be bounties or grants, the following "net" subsidies have been determined to exist on the enumerated products covered by this investigation: (1) Wool fabric—28.36 percent; (2) knitted wool

fabric—28.77 percent; (3) wool apparel—32.39 percent; (4) knitted wool scarves and gloves—28.09 percent; (5) wool/polyester fabric—16.77 percent; (6) wool/polyester apparel—22.63 percent; (7) cotton fabrics—3.03 percent; (8) men's cotton apparel—13.66 percent; (9) men's synthetic underwear—9.65 percent; (10) wool yarn (other than that entering under TSUSA item 307.60)—8.05 percent.

The Treasury Department has received information from the Government of Uruguay that, with respect to goods subject to this order exported from Uruguay to the United States on or after February 16, 1979, an export tax in the amount of the "net" bounty or grant enumerated above is to be imposed. Therefore, for those goods exported from Uruguay to the United States on or after February 16, 1979, no "net" bounty or grant remains and therefore there is no basis for the continued imposition of countervailing duties.

For the reasons stated above, it is hereby determined that no bounty or grant is being, or has been, paid or bestowed directly or indirectly, upon the manufacture, production, or exportation of certain textiles and textile products from Uruguay exported on or after February 16, 1979.

Accordingly, notice is hereby given that T.D. 78–444 is revoked and countervailing duties will not be imposed on certain textiles and textile products exported from Uruguay to the United States on or after February 16, 1979. With respect to all entries of those goods exported from Uruguay to the United States before February 16, 1979, which have not yet been liquidated or the liquidation of which has not become final, duties will be imposed in the adjusted amounts specified above.

The revocation of this determination will be contingent upon the submission to the Treasury Department of certification on a quarterly basis by the Government of Uruguay that the export tax is being assessed in the appropriate amounts.

The table in section 159.47(f), Customs Regulations (19 CFR 159.47(f)), is amended by deleting from the listings for Uruguay the words "textile mill products and men's and boys' apparel" from the column headed "Commodity;" from the column headed "Treasury decision" the number "78–444;" and the words "Bounty Declared-Rate" from the column headed "Action."

(R.S. 251, as amended, secs. 303, 624, 46 Stat. 687, as amended, 759, 19 U.S.C. 66, 1303, as amended, 1624.)

Pursuant to reorganization plan No. 26 of 1950 and Treasury Department order 190 (revision 15), March 16, 1978, the provisions of Treasury Department order 165, revised November 2, 1954, and section 159.47 of the Customs Regulations (19 CFR 159.47), insofar as

they pertain to the issuance of a revocation order by the Commissioner of Customs, are hereby waived.

March 15, 1979.

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

[Published in the Federal Register, Mar. 22, 1979 (F.R. 17483)]

(T.D. 79–93)

Foreign Currencies—Variances From Quarterly Rate

Rates of exchange based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in T.D. 79–16 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates:

Japan yen:
March 2, 1979 ..... $0. 004880

(LIQ–3–O:D:E)

Date: March 20, 1979.

BEN L. IRVIN,
Acting Director,
Duty Assessment Division.

(T.D. 79–94)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

Rates of exchange based on rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rial, People's Republic of China yuan, Philippines peso, Singapore dollar, Thailand baht (tical)

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to part 159, subpart C, Customs Regulations (19 CFR 159, subpart C).

People's Republic of China yuan:	
February 26, 1979 through March 2, 1979	$0.635768
March 5, 1979 through March 9, 1979	$0.635768
Hong Kong dollar:	
February 26, 1979	$0.207469
February 27, 1979	.207512
February 28, 1979	.207340
March 1, 1979	.206868
March 2, 1979	.207297
March 5, 1979	.207340
March 6, 1979	.207254
March 7, 1979	.207288
March 8, 1979	.207082
March 9, 1979	.207061
Iran rial:	
February 26, 1979 through March 2, 1979	N/A
March 5, 1979 through March 9, 1979	N/A
Philippines peso:	
February 26, 1979 through March 2, 1979	$0.1365
March 5, 1979 through March 9, 1979	.1365
Singapore dollar:	
February 26–28, 1979	$0.461681
March 1, 1979	.461467
March 2, 1979	.461148
March 5, 1979	.460193
March 6, 1979	.459770
March 7, 1979	.460299
March 8, 1979	.461042
March 9, 1979	.460405

Thailand baht (tical):	
February 26, 1979 through March 2, 1979	$0.0500
March 5, 1979 through March 9, 1979	.0500

(LIQ-3-O:D:E)

Date: March 20, 1979.

BEN L. IRVIN,
Acting Director,
Duty Assessment Division.

(T.D. 79–95)

Certain Fasteners From Japan

Suspension of liquidation and estimated new net amount of bounty or grant

TITLE 19—CUSTOMS DUTIES

CHAPTER I—U.S. CUSTOMS SERVICE, DEPARTMENT OF THE TREASURY

PART 159—LIQUIDATION OF DUTIES

AGENCY: U.S. Customs Service, Treasury Department.

ACTION: Suspension of liquidation and estimated new net amount of bounty or grant.

SUMMARY: This notice is to advise the public that a new net amount of the bounty or grant bestowed is being estimated with respect to certain industrial fasteners from Japan and that liquidation is being suspended. This action is the result of a determination by the Department of the Treasury that additional benefits which are considered bounties or grants under the countervailing duty law are bestowed upon the manufacture, production, or exportation of certain Japanese industrial fasteners.

EFFECTIVE DATE: April 9, 1979.

FOR FURTHER INFORMATION CONTACT: Donald W. Eiss, Office of Tariff Affairs, U.S. Treasury Department, 15th Street and Pennsylvania Avenue, NW., Washington, D.C. 20220; 202–566–8256.

SUPPLEMENTARY INFORMATION: On May 6, 1977, a countervailing duty order was published in the Federal Register with respect to certain industrial fasteners from Japan (T.D. 77–128, 41 F.R. 23146). As a result of that order, which applied to nuts and bolts entering the United States under item Nos. 646.54 and 646.56 of the Tariff Schedules of the United States (TSUS), a countervailing duty of 0.2 percent ad valorem was imposed. The programs found to con-

stitute the bestowal of a bounty or grant within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303) (hereinafter referred to as "the act"), were: (1) The deferral of income taxes on export earnings under the Overseas Market Development Reserve (OMDR); and (2) export promotional assistance provided by the Japanese External Trade Organization (JETRO).

It has now been determined by the Treasury Department that the Japanese industrial fastener industry is eligible for, and, in fact, receives, additional benefits which would be considered "bounty or grants" under section 303 of the act. The program in question was established under the "Temporary Measures Act for Small and Midsize Businesses With Regard to the High Yen Exchange Market" and has been in operation since October 1977. This program established a number of methods by which the Government of Japan can provide assistance to small and midsize Japanese firms which export and whose competitiveness has been adversely affected by the rapid appreciation of the yen. Assistance is provided in form of: (1) Low-cost loans; (2) the right to carry back current losses related to yen appreciation up to 3 years to offset income, corporate, and local taxes paid in prior years; and (3) special government credit guarantees for firms affected by yen appreciation over and above those otherwise offered to small and midsize businesses.

In light of the eligibility criteria, which limit utilization of the program to firms which export, this program clearly would constitute the bestowal of a bounty or grant within the meaning of the act. Information was requested from the Government of Japan regarding the degree of utilization of these various forms of assistance. Based upon the information supplied it is apparent that the fasterner industry has utilized at least some forms of the assistance; however, the data supplied was inadequate to allow a precise calculation of the benefits bestowed or identify the extent of utilization of the program by individual Japanese fastener manufacturer/exporters.

Accordingly, notice is hereby given that certain fasteners covered under TSUS item Nos. 646.54 and 646.56 and covered under T.D. 77–128 are benefiting from additional bounties or grants within the meaning of section 303 of the act. The aggregate estimated benefit to exports of certain fasteners is 4 percent ad valorem. This estimate has been made in the absence of information regarding benefits specifically conferred on manufacturers producing these fasteners. It is at this time expected that the Government of Japan is collecting such data as will be necessary to more accurately ascertain the net amount of bounty or grant.

Accordingly, in accordance with section 303 of the act, the net amount of the bounty or grant paid or bestowed, directly or indirectly,

upon the manufacture, production, or exportation of certain fasteners from Japan has been estimated to be 4 percent ad valorem. Effective on April 9, 1979, and until further notice, such fasteners, imported directly or indirectly from Japan, which benefit from bounties or grants and which are entered, or withdrawn from warehouse, for consumption on or after April 9, 1979, shall be subject, in addition to any other duties determined or estimated to be due, to payment of countervailing duties in the amount estimated above. Any merchandise subject to the terms of this order shall be deemed to have benefited from a bounty or grant if such bounty or grant has been or will be credited or bestowed, directly or indirectly, upon the manufacture, production, or exportation of such fasteners.

In light of the apparent efforts by the Government of Japan to collect such data as will be necessary to more accurately ascertain the net amount of bounty or grant and in order to permit a determination of the extent to which the program has been utilized, it has been deemed appropriate to suspend liquidation of entries pending receipt of such information and further declaration of the net amount of bounty or grant. Accordingly, the liquidation of all entries, or withdrawals from warehouse, for consumption of certain fasteners which enter the United States under TSUS items 646.54 and 646.56, imported directly or indirectly from Japan, shall be suspended as of April 9, 1979. A deposit of estimated countervailing duty shall be required at the time of entry, or withdrawal from warehouse, for consumption. If a manufacturer/exporter can certify to the district director of Customs, with written confirmation by the Government of Japan, that it is either not eligible for, or has not utilized any of the benefits under the high-yen measures program, the deposit of an estimated duty of 0.2 percent rather than 4 percent will be required.

The table in section 159.47(f) of the Customs Regulations (19 CFR 159.47(f)) is amended by inserting after the last entry for Japan under the commodity reading "Certain Fasteners" the number of this Treasury decision in the column headed "Treasury decision" and the words "Estimated new rate" in the column headed "Action."

Pursuant to reorganization plan No. 26 of 1950 and Treasury Department order 190 (revision 15), March 16, 1978, and the provisions of Treasury Department order No. 165, revised, November 2, 1954, and section 159.47 of the Customs Regulations (19 CFR 159.47), insofar as they pertain to the amendment of a countervailing duty determination by the Commissioner of Customs, are hereby waived.

March 19, 1979.

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

[Published in the Federal Register, Mar. 23, 1979 (44 F.R. 17653)]

ERRATUM

In CUSTOMS BULLETIN, vol. 12, No. 50, dated December 13, 1978, in T.D. 78–470–C, on p. 6, correct 3d line to read:

Merchandise: Teflon dispersions.

In CUSTOMS BULLETIN, vol. 12, No. 50, dated December 13, 1978, in T.D. 78–470–Z, on p. 12, correct 2d line to read:

Articles: Sucrose and invert liquid sugars and blends of invert and/or

In CUSTOMS BULLETIN, vol. 12, No. 50, dated December 13, 1978, in T.D. 78–471–A, on p. 13, correct 3d line to read:

Merchandise: Life jackets, life rafts, marker buoys, flares, first aid kits,

In CUSTOMS BULLETIN, vol. 13, No. 1, dated January 3, 1979, in T.D. 79–2–G, on p. 10, correct 9th line to read:

August 31, 1978.

In CUSTOMS BULLETIN, vol. 13, No. 9, dated February 28, 1979, on the front cover, correct C.R.D. 79–45 through 79–60 to read:

C.S.D. 79–45 through 79–60.

In CUSTOMS BULLETIN, vol. 13, No. 10, dated March 7, 1979, in T.D. 79–63–G, on p. 7, correct 9th line to read:

Rate forwarded to Regional Commissioner of Customs: Chicago, Novem-

In CUSTOMS BULLETIN, vol. 13, No. 10, dated March 7, 1979, in T.D. 79–63–M, on p. 9, correct 4th line to read:

Factories: Tuscaloosa, Ala.; Akron, Ohio; Miami, Okla.; Oaks, Pa.;

In CUSTOMS BULLETIN, vol. 13, No. 10, dated March 7, 1979, in T.D. 79–63–E, on p. 7, correct 6th line to read:

methicillin, potassium phenethicillin, sodium dicloxacillin, potas-

289–734—79——4

Decisions of the United States Court of Customs and Patent Appeals

(C.A.D. 1220)

THE UNITED STATES, *v.* A. N. DERINGER, INC., No. 78–7. (— F. 2d —)
THE UNITED STATES, *v.* A. N. DERINGER, INC., No. 78–8. (— F. 2d —)

1. TO RECOVER DUTIES PAID

These appeals by the United States are from judgments of the U.S. Customs Court, 80 Cust. Ct. 17, C.D. 4731, 447 F. Supp. 453 (1978) and 80 Cust. Ct. 19, C.D. 4732, 447 F. Supp. 451 (1978), in actions to recover duties paid on foodstuffs refused admission which were exported to the country of origin. The Customs Court dismissed both actions.

We vacate the judgment in No. 78–7 and remand to the Customs Court. We affirm the judgment in No. 78–8.

2. ID.

The decisions of the Customs Court provided appellee with new causes of action against the government and accordingly gave the government standing to appeal even though it obtained dismissal of the cases below.

3. LIQUIDATION—CONFORMANCE WITH § 12.6

A liquidation is in conformance with § 12.6 of the Customs Regulations only if it is performed at some time subsequent to the time the determination of admissibility is made.

4. ID.

19 USC 1514(a) contemplates that both the *legality* and correctness of a liquidation be determined, at least initially, via the protest procedure.

5. ACTS OF CONGRESS

It is not necessary to overrule our decisions in *United States* v. *Cajo Trading, Inc.*, 55 CCPA 61, 403 F. 2d 268, *cert. denied*, 393 U.S. 827 (1968) and *United States* v *C. O. Mason, Inc.*, 51 CCPA 107 (1964), *cert. denied*, 379 U.S. 999 (1965), since the Congress has already effectively done so by the passage of 19 U.S.C. 1514(a) and 19 U.S.C. 1500(d).

U.S. Court of Customs and Patent Appeals, March 15, 1979

Appeal from United States Customs Court, C.D. 4731, C.D. 4732

[No. 78–7—Vacated and remanded.]
[No. 78–8—Affirmed.]
Barbara Allen Babcock, Assistant Attorney General, *David M. Cohen*, Branch Director, *Joseph I. Liebman, Glenn E. Harris* for the United States.

[Submitted—November 28, 1978.]
Before MARKEY, *Chief Judge*, RICH, BALDWIN, LANE and MILLER, *Associate Judges*.

BALDWIN, Judges.

[1] These appeals by the United States are from judgments of the U.S. Customs Court, 80 Cust. Ct. 17, C.D. 4731, 447 F. Supp. 453 (1978) and 80 Cust. Ct. 19, C.D. 4732, 447 F. Supp. 451 (1978), in actions to recover duties paid on foodstuffs refused admission which were exported to the country of origin. The Customs Court dismissed both actions.

We vacate the judgment in No. 78–7 and remand to the Customs Court. We affirm the judgment in No. 78–8.

PROCEEDINGS BELOW

The facts in these appeals are quite simple. Certain foodstuffs from Canada which were subject to laws administered by the U.S. Food and Drug Administration (hereafter FDA) imposing various labeling requirements were entered at a New York border crossing. After entry, the goods were found by the FDA to not have been labeled in conformity with the law. Appellee was given appropriate notices of such nonconformity and of the detention of the goods to await a hearing. Appellee apparently did not avail itself of the right to contest the determinations at an FDA hearing, nor did it relabel the goods to conform with the law. Thereupon, appellee was given a formal notice of "refusal of admission" on each entry.

Upon entry, estimated duties were deposited for each shipment. Later, the District Director of Customs liquidated all of the entries dutiable "no change." In 78–7, the liquidation occurred after the formal notice refusing admission to the United States had been issued and 17 days after the goods had been exported under "Customs supervision." In 78–8, the liquidation occurred before the notice of "refusal of admission" issued and prior to exportation.[1] Appellee filed a protest against the liquidations involved in appeal No. 78–7 within the prescribed 90 days. In appeal No. 78–8, appellee permitted the 90-day period to lapse without lodging a protest regarding the liquidation of

[1] The chronology of events is as follows:

the entry, filing instead, at a later date, a protest against the refusal of the District Director to reliquidate the entry on the premise that the original liquidation had been actuated by "clerical error" or "inadvertence" or "mistake of fact" within the meaning of 19 U.S.C. 1520(c)(1).[2]

The cases were submitted to the Customs Court on stipulations of fact. In each instance, the court noted that under its view of the Customs Regulations, section 12.6,[3] the liquidation was void:

> The purpose of Customs Regulation, section 12.6 is apparent on its face. Liquidation in customs is the finalization of the customs entry process. This act constitutes a settlement of duties due the United States and finalizes the liability of the importer. This action under section 514 of the Tariff Act of 1930, as amended, is final and conclusive upon all parties unless a protest is filed against a valid liquidation or action of customs. It is certainly reasonable for customs to suspend liquidation on items such as food, drugs, devices and cosmetics until it is determined if entry under the law is permitted. If not permitted, as in the case at bar, such liquidation would be a useless act since the merchandise if exported or destroyed pursuant to the statute

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A. Customs Appeal No. 78-7

Entry No.	Date of entry	Detention Notice	Refusal notice	Liquidation	Export
110425	Aug. 28, 1972	*Aug. 29, 1972	*Sept. 8, 1972	Sept. 29, 1972	Sept. 12, 1972
111332	Aug. 29, 1972	do	do	do	Do
112509	Sept. 6, 1972	do.*	do.*	do	Do

B. Customs Appeal No. 78-8

Entry No.	Date of entry	Detention Notice	Refusal notice	Liquidation	Export
174407	May 30, 1972	June 7, 1972	June 27, 1972	June 23, 1972	June 27, 1972

*The stipulation of fact before the Customs Court is apparently erroneous. The record certified to this Court shows the detention notices for Entry Nos. 110425 and 112509 to be Aug. 31, 1972 and Sept. 5, 1972, respectively. Similarly the refusal notices are dated Sept. 12, 1972 and Sept. 21, 1972 respectively. The multiple notices for Entry No. 111332 were apparently confused with those for the remaining entries.

[2] 19 U.S.C. 1520 (c) (1) provides:

(c) Notwithstanding a valid protest was not filed, the appropriate customs officer may, in accordance with regulations prescribed by the Secretary, reliquidate an entry to correct—

(1) a clerical error, mistake of fact, or other inadvertence not amounting to an error in the construction of a law, adverse to the importer and manifest from the record or established by documentary evidence, in any entry, liquidation, or other customs transaction, when the error, mistake, or inadvertence is brought to the attention of the customs service within one year after the date of entry, or within ninety days after liquidation or exaction when the liquidation or exaction is made more than nine months after the date of the entry, or transaction ***.

[3] This regulation provides:

§12.6 Suspension of liquidation.

(a) The liquidation of each entry covering merchandise, the subject of §12.1,* shall be suspended until it is determined whether admission of the merchandise into the United States is permitted under the law. [*§12.1 covers, inter alia, food.]

and regulations would result in a refund of the duties deposited. 19 U.S.C. § 1558(a).

In view of the circumstances, I am constrained to find the liquidation to be in violation of section 12.6 of the customs regulations and therefore void.[4] [This language is found in both opinions.]

The government argues that these judgments grant appellee the right to obtain refunds of duties because the Customs Court held the liquidations complained of did not, in law, ever occur. Accordingly, the government argues that, in effect, it lost in the court below and hence it appeals.

OPINION

Initially we should make clear why the government, which obtained the dismissal of both cases in the Customs Court, has standing to appeal those decisions and why we then have jurisdiction to hear the cases. A necessary part and parcel of the judgments of the Customs Court were holdings that each of the liquidations in issue lacked legal existence. Were these judgments to be affirmed without modification, the Customs Service would then be under a statutory mandate to liquidate the entries for a "first" time and these acts would spur the running of the period for protesting the liquidations. The importer would be given a new cause of action without any regard to the tardiness of the protest in No. 78–8, or, indeed, to the sufficiency of the cases presented to the Customs Court involved in this appeal. It is not beyond reason that, given a second bite at the apple, appellee would be able to make the necessary "good faith" showings under 19 U.S.C. 1558(a)(2)[5] and recover duties in the belatedly protested No. 78–8. **[2]** Nevertheless, it is the addition of the causes of action against the government resulting from the decisions of the court below that provides it with the standing to appeal.

Appeal No. 78–7

The decisions of the Customs Court are based solely on a particular construction of the meaning of section 12.6 of the Customs Regulations. The Customs Court considers the rule to say that *if* the goods are

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[4] The government avers in its brief (No. 78-8) that this section "no longer exists" and as a result "what was, according to the trial court, a 'void' liquidation on Sept. 29, 1972, was, to all intents and purposes, a perfectly valid liquidation" after the alleged repeal.

It appears that Sec. 12.6 has continuously existed in one form or another since the liquidation in issue. For about 5 years, this regulation has been known as Sec. 159.55(a). See 38 F.R. 17482 (July 2, 1973).

[5] 19 U.S.C. 1558(a)(2) provides, in pertinent part:

(a) No remission, abatement, refund, or drawback of estimated or liquidated duty shall be allowed because of the exportation or destruction of any merchandise after its release from the custody of the Government, except in the following cases:

* * * * * * * *

(2) When prohibited articles have been regularly entered in good faith and are subsequently exported or destroyed pursuant to a law of the United States and under such regulations as the Secretary of the Treasury may prescribe * * *.

found to be inadmissible to the United States, then a liquidation is not allowed.[6] We do not agree with this interpretation of the regulation. The very words of the regulation speak only of determining "*whether* admission * * * is permitted." [Italic ours.] **[3]** In our view, a liquidation is in conformance with this regulation only if it is performed at some time subsequent to the time the section 12.6 determination is made. Whether that determination results in the goods being admitted or not is simply irrelevant to the question of a liquidation's conformance with section 12.6.[7]

The statutory path that must be followed in making the aforementioned determination also requires a dated notice of refusal be given to the owner or consignee, as the situation dictates.[8] The date of the statutory notice is the time of determination found in section 12.6 of the Customs Regulations.

Since the liquidations in this case were made after the notice of refusal issued, the liquidations complied with section 12.6 of the Customs Regulations. Accordingly, we *vacate* the judgment of the Customs Court in this case and *remand* it for a consideration of appellee's claim for refund of duties.[9]

Appeal No. 78–8

In this case, the liquidation preceded the notice of refusal by several days. Despite the government's arguments to the contrary,[10] this action cannot be said to be in conformance with section 12.6.

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[6] Although the Customs Court emphasized in No. 78-7 that the goods were liquidated some time after their exportation, that fact alone does not appear to be the reason for the holding. In No. 78-8, liquidation occurred prior to exportation and yet the Court's holding was the same. Clearly, the common reason for those holdings was not the relative times of liquidation but rather the fact that the goods were refused entry.

[7] It must be understood that we are not holding that the liquidation is, in all respects, correct. We only hold that it conforms to sec. 12.6 of the Customs Regulations.

[8] That determination is made via the process outlined in 21 U.S.C. 381:

> (a) The Secretary of the Treasury shall deliver to the Secretary of Health, Education, and Welfare, upon his request, samples of food, drugs, devices, and cosmetics which are being imported or offered for import into the United States, *giving notice* [*] *thereof to the owner or consignee*, who may appear before the Secretary of Health, Education, and Welfare and have the right to introduce testimony. * * * If it appears from the examination of such samples or otherwise that * * * (3) such article is adulterated, misbranded, or in violation of section 355 of this title, then such article shall be refused admission, except as provided in subsection (b) of this section. The Secretary of the Treasury shall cause the destruction of any such article refused admission unless such article is exported, under regulations prescribed by the Secretary of the Treasury, within ninety days of the *date of notice* [*] *of such refusal* or within such additional time as may be permitted pursuant to such regulations. [*The dates of both the notices of detention and hearing as well as the notices of refusal are found in footnote 1, supra.] [Italic ours.]

[9] We do not reach the merits of appellee's claim since such was not considered by the Customs Court. We note that the mere fact that appellee exported the goods does not, in and of itself, entitle it to a refund of the estimated duties deposited upon entry of the goods into this country. See 19 U.S.C. 1558.

[10] The government argues that since appellee exported the goods on the very day the formal notices of "refusal of admission" were issued, it already knew that the goods were not being allowed to remain in this country. The pertinence of this argument is not apparent in that it ignores the fact that a notice is required by 21 U.S.C. 381 (a) (footnote 7, supra) and, indeed, does not even argue that this putative knowledge existed before the liquidation was made.

The government additionally argues that since the District Director liquidated the entry after the expiration of the period provided the appellee for producing testimony showing the goods to be admissible, the liquidation occurred after the time the *effective* determination of inadmissibility was made. Again, this argument ignores the notice required by 21 U.S.C. 381(a).

The effect of this premature liquidation is in issue.

The Customs Court held that nonconformity with section 12.6 mandates a finding that the liquidation was void ab initio. We do not agree.

[4] The statute [11] contemplates that both the *legality* and correctness of a liquidation be determined, at least initially, via the protest procedure. The wording of this statute makes it clear that *any* challenge to the propriety of a liquidation (not specifically excepted) must be through this statute.

Additionally, the statute requires that the protest be filed within 90 days of the *decision* complained of.[12] In this case, the protest was not filed within ninety days of the *decision* complained of and the jurisdiction of the Customs Court never attached.[13]

The government notes a certain similarity between the reasoning of the Customs Court in the cases at bar and our decisions in *United States* v. *Cajo Trading, Inc.*, 55 CCPA 61, 403 F. 2d 268, *cert. denied*, 393 U.S. 827 (1968) and *United States* v. *C. O. Mason, Inc.*, 51 CCPA 107 (1964), *cert. denied*, 379 U.S. 999 (1965), and suggests that now is an appropriate time to overrule those cases. The *Cajo* and *Mason* cases did, in fact, have as a basis for decision a "void liquidation" theory. There, however, the similarity ends. In *Cajo* and *Mason*, the "void liquidations" were based, respectively, on a void Presidential Proclamation and an unconstitutional statute. In the cases on appeal, there is no complaint that the regulation in issue is void for any reason. We further note that the Customs Court did not mention either the *Cajo*

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[11] 19 U.S.C. 1514(a) provides, in pertinent part:

(a) Except as provided in * * * sec. 1520 of this title (relating to refunds and errors), * * * decisions of the appropriate customs officer, including the legality of all orders and findings entering into the same, as to—

* * * * * * *

(5) the liquidation or reliquidation of an entry, or any modification thereof;

* * * * * * *

(7) the refusal to reliquidate an entry under sec. 1520(c) of this title,

shall be final and conclusive upon all persons (including the United States and any officer thereof) unless a protest is filed in accordance with this section, or unless a civil action contesting the denial of a protest, in whole or in part, is commenced in the U.S. Customs Court * * *.

[12] 19 U.S.C. 1514 (b)(2) provides:

(2) A protest of a decision, order, or finding described in subsection (a) of this section shall be filed with such customs officer within 90 days after but not before—

(A) notice of liquidation or reliquidation, or

(B) in circumstances were subparagraph (A) is inapplicable, the date of the decision as to which protest is made.

[13] 28 U.S.C. 1582(c) provides:

(c) The Customs Court shall not have jurisdiction of an action unless (1) either a protest has been filed, as prescribed by sec. 514 of the Tariff Act of 1930, [19 U.S.C. 1514] as amended, and denied in accordance with the provisions of sec. 515 of the Tariff Act of 1930, as amended, or if the action relates to a decision under sec. 516 of the Tariff Act of 1930, as amended, all remedies prescribed therein have been exhausted, and (2) except in the case of an action relating to a decision under sec. 516 of the Tariff Act of 1930, as amended, all liquidated duties, charges or exactions have been paid at the time the action is filed.

or the *Mason* cases. *Cajo* and *Mason* were the result of extraordinary factual and legal situations requiring unique remedies.

[5] We do not find it necessary to overrule *Cajo* and *Mason* since the Congress has already effectively done so. As noted above, 19 U.S.C. 1514(a) (1970) makes it quite clear that timely protests must be filed in order to challenge "decisions of the appropriate customs officer, including the *legality* of all orders and findings entering into same." (Italic ours.) The demise of the "void liquidation" rule is further highlighted by the omission from the Tariff Act, as amended in 1970, of the very statutory language—"as provided by law"—relied upon by the court in *Mason*. The appropriate customs official is now required simply to "liquidate the entry of such merchandise" (19 U.S.C. 1500(d) (1970)) rather than "liquidate * * * as provided by law" (19 U.S.C. 1505 (1930)). Removal of this stipulation further enhances what we perceive to be a pervasive requirement throughout the statute to channel all nonexcepted protests through section 1514 even when those protests go to the legality of a custom official's action.

Since the protest to the liquidation was not timely filed, the complaint was properly dismissed although the correct basis is lack of jurisdiction. The Customs Court apparently found no merit in the protest (tardily filed under Sec. 1558(a)(2)) and then additionally reviewed the complaint under one of the exceptions to the protest procedure (19 U.S.C. 1520(c)(1) supra) having to do with failure of the customs official to reliquidate an entry to correct a clerical error or the like. The Customs Court noted that the record was barren of any evidence tending to support a finding that a clerical error existed. We see no reason to disturb this finding. The judgment is *affirmed*.

Decisions of the United States Customs Court

Customs Decision

(C.D. 4790)

HAWAIIAN MOTOR COMPANY *v.* UNITED STATES

Mechanical equipment

Chief Use—Condition of Merchandise as Imported—Class or Kind

Gasoline-powered, hand-operated brush cutters imported at Los Angeles-Long Beach, Calif. from Japan and classified in liquidation under TSUS item 674.70 as hand-directed or -controlled tools with pneumatic or self-contained nonelectric motor, *Held*, properly classified

as against claim by the importer for classification of the brush cutters under TSUS item 666.00 as hay or grass mowers or as agricultural or horticultural implements not specially provided for, where most of the evidence of chief use relied upon by the importer reflects a condition of the merchandise other than as imported and the remaining evidence falls short of establishing the chief use of a class or kind of merchandise to which the imported brush cutters belong.

Court No. 75–12–03069

Port of Los Angeles

[Dismissed.]

(Decided March 8, 1979)

Stein, Shostak, Shostak & O'Hara, Inc. (*John N. Politis* of counsel) for the plaintiff.

Barbara Allen Babcock, Assistant Attorney General (*John J. Mahon*, trial attorney), for the defendant.

RICHARDSON, Judge: The merchandise in this action, described on commercial invoices as "Xenoah" BCD brush cutters, was exported from Japan in 1975, and classified in liquidation upon entry at Los Angeles, Calif., under TSUS item 674.70 as modified by T.D. 68–9 as hand-directed or -controlled tools with pneumatic or self-contained nonelectric motor, and parts thereof, other, at the duty rate of 4.5 per centum ad valorem. The plaintiff-importer claims that the merchandise is properly classifiable under TSUS item 666.00 as hay or grass mowers (except lawnmowers) or as agricultural and horticultural implements, not specially provided for, and parts thereof, free of duty. And the Government claims, alternatively, that in the event the court overrules the classification of the imported merchandise, then the merchandise is properly classifiable under TSUS item 666.10 as modified by T.D. 68.9 as lawnmowers, at the duty rate of 10 per centum ad valorem.

In the complaint plaintiff alleges that the merchandise in issue was chiefly used in the United States at the time of importation to cut hay, brush, weeds, and foliage in agricultural and horticultural pursuits. Although this allegation is put in issue by the Government's answer, it is noted that there is no allegation in the complaint concerning the chief use of any class or kind of article to which the imported article is alleged to belong.

As imported the merchandise consists of a 22.5 cm^3 gasoline engine, stand, tool kit, and two blades packed in one carton, and a drive shaft packed separately in another carton. However, the record shows that the merchandise is not marketed in this country in the condition in

which it is imported. As sold here the product, referred to by plaintiff as the "Green Machine 3000", consists of some of the imported merchandise plus a nylon cord trimmer, and, in some cases, a hedge trimmer, and/or a two-speed drill. The nylon cord trimmer is used in place of the imported brush and saw blades which are usually sold here only as accessories. And when either the hedge trimmer or two-speed drill is to be used, the engine is detached from the shaft and coupled to the trimmer or drill.

Most of the rather extensive testimony given by witnesses called on plaintiff's behalf on the issue of chief use is directed to the use of the article with components added in the United States, principally the nylon cord trimmer. However, since such evidence reflects a condition of the merchandise other than as imported, this evidence is irrelevant on the issue of chief use, and cannot properly be considered by the court in connection with classification of the imported merchandise. It is well settled that classification of an imported article must rest upon its condition as imported. *The Carrington Co. et al. v. United States*, 61 CCPA 77, 81, C.A.D. 1126, 497 F. 2d 902 (1974); *United States* v. *Citroen*, 223 U.S. 407, 414–415 (1912).

In reaching this conclusion the court is not unmindful of the case of *Theo. H. Davies & Co., Ltd*, v. *United States*, 70 Cust. Ct. 5, C.D. 4399 (1973), to which attention has been called by plaintiff. In that case a cane grabber was added after importation to the imported cane loader adjudged by the court to be in a class by itself, and the presence of the cane grabber was considered by the court in reaching its conclusion of chief use as an agricultural implement entitled to classification under TSUS item 666.00 as claimed by the importer.

It is clear, however, that the facts in C.D. 4399 are significantly different from those at bar. In C.D. 4399 the cane loader was used only for harvesting sugarcane, and the added cane grabber was obviously complementary to this singular use. In the instant case, the components added in the United States are not complementary to the use of the imported blades, but are substitutes therefor, and involve different uses. As such, C.D. 4399 does not pose a deterrent to the court's rejection here of the evidence offered by plaintiff embracing post-importation components. The court fully agrees with defendant's contention that "any arguments, evidence or exhibits that rely upon the use of the imported article with other than the imported saw or brush blade are completely without relevance or merit, and cannot be a proper basis for the classification of the merchandise before this Court." [1] (Defendant's brief, p. 19)

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[1] With the rejection of evidence of post-importation components for irrelevancy, the court also does not reach defendant's alternative claim for classification of the imported brush cutters under item 666.10 as lawn mowers inasmuch as this claim is predicated upon the rejected evidence (defendant's brief, p. 37).

With respect to the blade-equipped imported article, Dale Duane Evenson, plaintiff's president, testified that with the brush blade one can cut heavy, stalky brush, and clear brush with it, and that with the saw blade one can clear out heavy brush as well as trim branches off trees and other plant-type things. The witness pointed out that the Xenoah BCD brush cutter has an all-position diaphragm carburetor which enables one to turn the cutter up and reach overhead in connection with work in trees and on hillsides. Mr. Evenson stated that he did not know how plaintiff's sales of the imported brush cutter compared with sales of competitors in 1974 and 1975 who numbered about three or four.

A promotional film sold by plaintiff through its distributors to dealers depicts, among other things, the use of the Green Machine 3000 equipped with a blade in an overhead posture (exhibit 2). Another promotional film (exhibit 3) depicts, among other things, the Green Machine 4000 equipped with a blade being used in an upright position. It is said that the model 4000 machine, being a heavy-duty machine with a larger motor and more power than the model 3000 machine, lacks the all-position diaphragm carburetor which would enable it to be used in an overhead posture as is done with the model 3000 machine.

There is little evidence in the record as to how blade-equipped brush cutters were used in the United States as of the time of importation of Xenoah BCD brush cutters at bar. Of the six witnesses presented by plaintiff none testified to any significant extent relative to blade-equipped cutting machines.

Joel F. Herman, grounds maintenance contractor for Maintenance Engineers of Los Angeles, Calif., testified that his company didn't use the blades on its Green Machines.

Carl J. Cole, a lawnmower equipment sales and service store owner based in Wichita, Kans., testified that only 20 percent of the Green Machines he sold were equipped with blades.

Wilbur L. Johnson, head of Johnson Agricultural Corp., an orchard management and development business in San Diego, Calif., testified that he thought the majority of the 35 model 3000 Green Machines he sold from late 1975 until late 1977 were equipped with blades.

Bryant Cleve Larson, president of Oregon Toro Distributors, a specialty wholesaler of lawn and garden products in the southwest river counties in the State of Washington, testified about sales of Green Machines and observed uses thereof in Oregon and Washington only in 1976 and later.

Gordon Paul Davis, general manager of Pacific Turf of San Diego, Calif., which is in the business of commercial sales and distribution of turf equipment, testified that he has seen the Green Machine 3000

used, among other things, for pruning trees in the San Diego County area.

Thus, only the witness Davis offered any relevent testimony relating to the use of the imported brush cutter during the period in question. However, plaintiff presented no evidence as to the chief use of a class or kind of merchandise to which the imported merchandise belongs. And, unlike the situation in C.D. 4399, the instant record indicates that three other blade-equipped cutting machines were produced or offered for sale in this country during the period in question which competed with the imported article.

Classification of articles under item 666.00 is controlled by use. And the use which governs is the chief use of the class or kind of articles at or immediately prior to importation to which the importation belongs. General Interpretative Role 10(e)(i). See also, *United States* v. *Baltimore & Ohio RR. Co., a/c United China & Glass Co.*, 47 CCPA 1, C.A.D. 719 (1959).

Further, chief use must be predicated upon evidence which is representative of an adequate cross section of the country. *L. Tobert Co., Inc., et al.* v. *United States*, 41 CCPA 161, 164, C.A.D. 544 (1953).

Measured against these principles it is clear that plaintiff's evidence falls well short of establishing the chief use of the class or kind of merchandise to which the imported merchandise belongs as hay or grass mowers, or as agricultural and horticultural implements, not specially provided for, within the meaning of item 666.00.

There is no indication of record that the merchandise as imported was equipped with a blade guard for use in connection with the operation of the two circular blades, and two witnesses gave the absence of a blade guard as a reason for not using the machine. The witness Herman testified on cross-examination by defendant's counsel (R. 57):

> Q. Would you use the blades in that more than you would the monofilament head?—A. We use, basically, the monofilament for a safety standard. We have had very poor luck keeping the safeguards. Our men sort of discharge them, and my insurance company frowns on them, so we stay strictly with the monofilament yarn.

In the same connection, Arnold J. Reah, general manager of Piston Powered Products, a manufacturer of gasoline-powered two-cycle engines and accessory tools, testified on cross-examination by plaintiff's council (R. 315):

> Q. In your experience with the farm, would you say the Green Machine 3000 would be a handy tool to trim the branches of orchards on the farm?—A. We did not have orchards, so to speak, on our particular farm. As far as myself, I have to go along with my feeling before that I think it is quite dangerous.

Q. Have you ever used the Green Machine to cut overhead?—A. No.
Q. Have you ever done it?—A. No, I have not.
Q. You don't know whether it is safe or not?—A. I see a blade rolling around and I don't want to use it.

On his direct examination the witness Reah testified that his company contemplated producing a cutting machine equipped with a blade at one time, but decided not to do so after evaluating the amount of sales of the blade and the safety hazard (R. 305).

The court, while viewing the demonstration film of the Green Machine 3000, observed the unshielded cutting blades, and an exposed blade revolving at 5,000 revolutions per minute or more represents a potential source of danger to the machine operator and others should the blade separate from the power shaft for any reason while the machine is being manipulated overhead, or even along the ground. As such, the court is not inclined to presume from an inspection or other examination of the imported merchandise that a class or kind of merchandise to which the imported merchandise belongs is being used in this country in the manner contended for by plaintiff.

But even if the court could conclude, as plaintiff suggests (plaintiff's brief, p. 30) that "the character of the Green Machine demonstrates its chief use as a horticultural implement", the court fails to see how this would aid the plaintiff in this case. The very versatility of the Xenoah BCD model, i.e., ability to prune overhead as well as to cut in a sweeping arc at ground level, demonstrates that this particular model is something "other than" or "more than" a grass mower for purposes of classification under the eo nomine provision therefor in item 666.00, and as such, could not properly be classified thereunder. Moreover, the Xenoah BCD model does not appear to be the model intended by the foreign manufacturer to be used for grass or pasture mowing, according to literature attached by plaintiff to its administrative protests filed in the case, depicting another model equipped with knifelike rotary blades under a disk cover for ground level operation.

And, as for classification of the Xenoah BCD model under the residual provision in item 666.00 for horticultural implements not specially provided for, such action would only be warranted if the cutting machine were not specially provided for in the TSUS. See headnote 1, schedule 6, part 4C, TSUS. However, the court is firmly of the opinion that the Xenoah BCD brush cutter is described by and falls squarely within the provision for hand-directed or -controlled tools with self-contained nonelectric motor in item 674.70, and is, therefore, specially provided for in the TSUS. The machine is hand operated, and, when fully assembled, contains a self-contained non-

electric motor. The court is not persuaded that the designation "motor" in item 674.70 is to be given a meaning other than or more restrictive than its common meaning which, of course, embraces the term "engine". And, in the court's view, an article which is described in a tariff provision in terms of its functions, properties, or attributes, or any combination thereof, as is the case with item 674.70, is as much "specially provided for" as is an article which is described in a tariff provision in terms of its name.

It follows, therefore, that since plaintiff has failed to establish prima facie the chief use of the imported brush cutters the action must be dismissed.

Judgment will be entered herein accordingly.

(C.D. 4791)

BLOCK HANDBAGS INC. *v.* UNITED STATES

Lack of jurisdiction

Court No. 78–10–01807

Port of New York

[Motion to dismiss granted.]

(Dated March 8, 1979)

Mandel & Grunfeld (*Robert B. Silverman* of counsel) for the plaintiff.

Barbara Allen Babcock, Assistant Attorney General (*Sidney H. Kuflik*, trial attorney), for the defendant.

RICHARDSON, Judge: Plaintiff moves under rule 3.2(f) for an order granting it leave to file an amended summons correcting page CC–S3 of the summons to show entry No. K383327 rather than entry No. K387327 to be covered by protest No. 1001–7–006774. Plaintiff asserts that the error was typographical in nature, and that a correction will not prejudice defendant.

Defendant opposes the motion, and cross-moves under rules 4.7(b) and 4.12 for an order severing the action and dismissing it as to entry No. K387327. Defendant asserts that it would be prejudiced if the relief sought by plaintiff is granted, pointing out that entry No. K387327 appeared not only on the summons but also on protest No. 1001–7–006774, and that the proposed amendment would encompass an entry of merchandise which was never covered by the protest. Plaintiff did not respond to the cross-motion.

An examination of the court's files accompanying the instant motions discloses:

(a) a TRANSMITTAL SHEET on which is noted – "Entry No. K387327 cannot be identified with Importer of record. See attached 5101.";
(b) a SUMMONS in which plaintiff is designated as "Importer" as to protest No. 1001–7–006774 covering entry No. K387327;
(c) a CUSTOMS FORM 5101 covering entry No. 387327 dated June 28, 1977, which is signed by S. STERN CUSTOM BROKERS INC. on behalf of RAYMOR RICHARDS MORGENTHAU INC., Div. of Raymor Mfg.; and
(d) a PROTEST filed Oct. 12, 1977, in which plaintiff is designated as the protesting party as to entry No. K387327 against a decision, liquidation and assessment at 25 percent under TSUS item 656.25, which was denied under date of June 23, 1978, by the appropriate customs officer on the ground that "No item in this entry was entered under TSUSA 656.25/25 percent".

On the state of the record before the court the court agrees with the defendant. Amending the summons in the manner sought by plaintiff in its motion would have the effect of placing the entry covered by the summons at variance with the entry covered by the administrative protest. And there is no indication in the record that such an amendment was sought by plaintiff at the administrative level as provided for in 19 U.S.C.A. 1514(b)(1) and 19 CFR 174.14 (1977).

Further, although there is nothing in the protest itself to indicate the capacity in which plaintiff acted in filing that document administratively,[1] i.e., whether as importer, consignee, or agent, plaintiff has represented to the court that it acted as importer in filing the summons. However, since the asserted capacity is conclusively refuted by the disclosures of different parties in Customs form 5101, it is clear that plaintiff lacks standing to prosecute the action as authorized under 28 U.S.C.A. 1582(a), vis-a-vis 19 U.S.C.A. 1514(b)(1).

Therefore, plaintiff's motion to amend is denied, and defendant's cross-motion to sever and dismiss is granted.

[1] This would appear to account for the disposition of the protest on its merits rather than on jurisdictional grounds.

Decisions of the United States Customs Court

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *March 12, 1979.*

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

ROBERT E. CHASEN,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P79/33	Richardson, J. March 6, 1979	John V. Carr & Son, Inc.	75-1-00076, etc.	Item 608.05 0.3¢ per lb.	Item 608.02 Duty free	John V. Carr & Sons, Inc. v. U.S. (C.D. 2384); U.S. Customs Service ruling letter of 12/22/75	Port Huron (Detroit) Iron powder (MP61 produced by Domtar, Ltd.), covered by ruling letter of 12/22/75
P79/34	Richardson, J. March 6, 1979	John V. Carr & Son, Inc.	77-2-00242	Item 608.05 0.3¢ per lb.	Item 608.02 Duty free	John V. Carr & Sons, Inc. v. U.S. (C.D. 2384); U.S. Customs Service ruling letter of 12/22/75	Detroit Iron powder (MP61 produced by Domtar, Ltd.), covered by ruling letter of 12/22/75

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P79/35	Richardson, J. March 6,1979	F. W. Myers & Co., Inc.	74-7-01812	Item 608.08 9.5%	Item 608.04 0.31¢ per ton plus additional duties	John V. Carr & Sons, Inc. v. U.S. (C.D. 2384)	Champlain-Rouses Poin (Ogdensburg) Iron powder (MP52)
P79/36	Richardson, J. March 6, 1979	C. J. Tower & Sons of Buffalo, Inc.	75-1-00074	Item 608.08 9.5%	Item 608.04 0.31¢ per ton plus additional duties	John V. Carr & Sons, Inc. v. U.S. (C.D. 2384)	Buffalo-Niagara Falls (Buffalo) Iron powder (MP52)
P79/37	Richardson, J. March 6, 1979	C. J. Tower & Sons of Buffalo, Inc.	75-1-00075	Item 608.05 0.3¢ per lb.	Item 608.02 Duty free	John V. Carr & Sons, Inc. v. U.S. (C.D. 2384); U.S. Customs Service ruling letter of 12/22/75	Buffalo-Niagara Falls (Buffalo) Iron powders (MP32 and MP61 produced by Domtar, Ltd.), covered by ruling letter of 12/22/75
P79/38	Richardson, J. March 7, 1979	F. W. Myers & Co., Inc.	75-3-00607	Item 608.05 0.3¢ per lb.	Item 608.02 Duty free	John V. Carr & Sons, Inc. v. U.S. (C.D. 2384); U.S. Customs Service ruling letter of 12/22/75	Champlain-Rouses Point (Ogdensburg) Iron powder (MP61 produced by Domtar, Ltd.), covered by ruling letter of 12/22/75
P79/39	Landis, J. March 7, 1979	C. H. Powell Company	76-9-01980	Item 332.40 15%	Item 355.65 8.5%	Bruce Duncan Co., Inc. v. U.S. (C.D. 4736)	Boston Woven fabrics coated with polyamide dots
P79/40	Landis, J. March 7, 1979	C. H. Powell Company	76-12-02797	Item 332.40 15%	Item 355.65 8.5%	Bruce Duncan Co., Inc. v. U.S. (C.D. 4736)	Boston Woven fabrics coated with polyamide dots

P79/41	Landis, J. March 7, 1979	C. H. Powell Company	77-1-00120	Item 332.40 5%	Item 355.65 8.5%	Bruce Duncan Co., Inc. v. U.S. (C.D. 4736)	Boston Woven fabrics coated with polyamide dots
P79/42	Boe, J. March 7, 1979	William R. Marshall, for the Account of Clairol, Inc.	75-1-00333	Item 544.51 20.5% upon full value of merchandise	Items 688.40/807.00 6.5% upon full value of imported articles, less cost or value ($1.38605 each) of prefabricated U.S. manufactured components contained in model [C]LM3 imported in 1971	The Englishtown Corporation v. U.S. (C.A.D. 1187)	New Haven (Bridgeport) American goods returned; electrical makeup appliances incorporating mirrors, lights and other features (model [C]LM3)
P79/43	Landis, J. March 8, 1979	C. H. Powell Company	75-1-00164	Item 332.40 15%	Item 355.65 8.5%	Bruce Duncan Co., Inc. v. U.S. (C.D. 4736)	Boston Woven fabrics coated with polyamide dots
P79/44	Landis, J. March 8, 1979	C. H. Powell Company	76-5-01215	Item 332.40 15%	Item 355.65 8.5%	Bruce Duncan Co., Inc. v. U.S. (C.D. 4736)	Boston Woven fabrics coated with polyamide dots
P79/45	Landis, J. March 8, 1979	C. H. Powell Company	77-1-00121	Item 332.40 15%	Item 355.65 8.5%	Bruce Duncan Co., Inc. v. U.S. (C.D. 4736)	Boston Woven fabrics coated with polyamide dots
P79/46	Landis, J. March 8, 1979	C. H. Powell Company	77-6-01000	Item 332.40 15%	Item 355.65 8.5%	Bruce Duncan Co., Inc. v. U.S. (C.D. 4736)	Boston Woven fabrics coated with polyamide dots

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P79/47	Watson, J. March 8, 1979	Naftone, Inc., et al.	70/7145, etc.	Item 405.25 16% + 2.5¢ per lb.; 14%+2.2¢ per lb.; 12.5%+ 1.9¢ per lb.; 10.5%+1.6¢ per lb.; 9%+ 1.4¢ per lb.	Item 494.60 4%, 3% or 2.5%	Naftone, Inc. v. U.S. (C.D. 4578, aff'd C.A.D. 1166)	New York Desmocoll 400, etc.

Decisions of the United States Customs Court

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R79/27	Richardson, J. March 7, 1979	Nordby Supply Co.	76-12-02691	Antidumping duties	Merchandise not subject to antidumping duties; protest sustained; district director shall refund assessed antidumping duties	Judgment on the pleadings	Seattle Fish netting
R79/28	Richardson, J. March 7, 1979	Toyo Rug Co., Ltd.	R61/4347	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Boston Oval tubing rugs

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